



*The Institute of Brazilian Issues & Public Management Issues*

**Theory and Operation of a Modern National Economy**

**THE UNITED STATES EMPLOYMENT LAW AND THE  
REFLECTION UPON THE EMPLOYMENT MARKET – A  
PROPOSAL FOR THE BRAZILIAN EMPLOYMENT LAW REFORM**

**By Renato Bignami  
Advisor Prof. Stephen C. Smith  
The Minerva Program – Spring 2000**

*Table of Contents:*

*Introduction*

*1. The American employment relationship through its sources of law*

*1.1.Common law tort and contract doctrines*

*1.1.1. Tort*

*1.1.2. Contracts*

*1.2.Constitutional provisions*

*1.3.Statutory regulation*

*1.3.1. Labor law*

*1.3.2. Individual employee rights*

*2. How did the American employment relationship make some influence in the creation of jobs and the next steps to improve the American employment relationship*

*3. A proposal for the Brazilian employment relationship reform*

*3.1. The Brazilian employment law*

*3.1.1.The Brazilian individual employee rights*

*3.1.2.The Brazilian labor law*

*3.2.International agreements ratified by Brazil*

*3.3.The role of the Brazilian Ministry of Labor and Employment*

*3.4.The proposals for the Brazilian employment law reform*

*Conclusion*

*Bibliography*

## **ACKNOWLEDGEMENTS:**

The author is very grateful to:

- Dr. James Ferrer, Jr., director of IBI, for believing in the initial proposal for this paper,
- All the IBI staff, for every help provided, which certainly made the difference in this paper,
- Mr. Stephen C. Smith, Professor of Economics at the George Washington University, for the advisors that made this work possible,
- The Brazilian Minister of Labor and Employment Dr. Francisco Oswaldo Neves Dornelles, for being in the head of so important entity in a so odd opportunity,
- The Secretary Executive of the Brazilian Ministry of Labor and Employment Dr. Paulo Jobim Filho, for the sensibility to deal with the Labor Inspection, in all levels,
- All my colleagues in the Brazilian Labor Inspection in the Ministry of Labor and Employment, specially to Mrs. Vera Olímpia Gonçalves, Secretary of Labor Inspection, Mrs. Lucy Helena Lipel, Special Assistant to the Secretary of Labor Inspection, Mrs. Vilma Dias Bernardes Gil, Training Coordinator for the Labor Inspection, state of São Paulo, Mrs. Roseli Nieto Piovezan, São Paulo Labor Inspection Division Chief, and Mr. Glauber Maciel Santos, Coordinator of Special Projects of the Secretary of Labor Inspection, to support the work of the author in all the instances of the Ministry's bureaucracy,
- All the Minerva Institute staff in Rio de Janeiro, in the person of Prof. Roberto Campos and Prof. Gilberto Paim, for maintaining the flame burning, and last but not least,
- All my colleagues of the 11<sup>th</sup> Minerva Program for the joy to know such diversified and interesting people and the experience to live four months in their presence.

## **INTRODUCTION**

This work seeks to trace and to present a brief comparison between American employment relationship system and Brazilian employment relationship system as well as presenting their laws and the way they work.

The present paper will also briefly describe the influence of the North American employment law system in the creation of jobs. Finally, as a result of the study that will be developed, some proposals will be presented for the Brazilian employment law reform in order to improve the Brazilian labor force, make it stronger and more qualified, improve its productivity and increase its competitiveness.

As known, Brazil has an international agenda related to the human rights agreements in the labourite field already ratified, most of them issued by the International Labor Organization (ILO) through its circa 200 conventions, so far. Nevertheless, while legally employee rights in Brazil may be in accord with the international norms, it is a separate issue whether these are enforced. In particular, even though they may be enforced in the modern sector, in the urban favelas, as well as in the backward rural areas, these rights may not be enforced. Due to its limits the present paper will not address this issue. It might be subject of further researches that would lead to a supplementary approach. Besides, it is an issue of a specific complexity. The urban informal sector has been an important engine of growth in some Latin American economies, so it is well to consider the positive features of this sector, and ways that its efficiency and social contributions could be improved.

Because the Brazilian public sector employment law has specific rules and as it has already passed through a deep reform recently, the employment relationship system in the public sector of both countries will not be part of the present study. This paper will only describe the employment relationship between employers and employees in the private sector.

A primary difference between both systems could be noted. In Brazil, employment law is an exclusive Federal issue while in the United States it is both a Federal and a State issue. As this work will look at the matter as a whole, focus will be, in the case of the United States, on the Federal rules, rather than the State rules.

The American employment relationship system is regulated in various ways. Individual employment contracts, the most common way in the American labor force, normally are made under the application of tort and contract doctrines, based on common law doctrine, and regulated also by some statutes like wage and hours, protection from discrimination, health and safety, the right to organize and negotiate, collective bargaining agreements and others.

Brazilian employment law Doctrine, following Continental European employment law Doctrine, has adopted a distinction between individual employee rights and labor law. Individual employee rights are more likely to be expressed in the Brazilian statutes like CLT (Consolidação das Leis do Trabalho) and others like the Brazilian temporary work act (Lei 6.019/74), and the Brazilian rural workers act (Lei 5.889/73). On the other hand, collective employees rights, those that arise from a collective bargaining process or agreement, are more likely to be expressed in the contracts signed between employers and unions to a certain category of workers in a certain territory of the country, not smaller than a municipality.

In order to understand the differences between both systems it is important to explain the differences in the use of the sources of law. Sources of law is a concept that means the different origins the law itself comes from.

Traditional European law Doctrine says that there are five main sources of law and they are the law itself (the Constitution, statutes, acts, decrees, etc.), the Doctrine (studies developed by the jurists), the jurisprudence (cases decided by the courts), the custom (uses and customs of certain group or groups of persons) and the general principles of law (here understood as some assumptions adopted by humanity as a wish in order to drive the way law is made, understood, enforced and adopted by the entities.

The differences between the two countries can be traced through the differences between the sources of law most commonly used. Although both countries do have the same sources in their law system, the United States system is based upon common law which means a strong case and customs law rather than statutory, due to its British colonial past, while Brazil, a former Portugal colony, has a strong statutory system, rather than a custom and case law system, following the law of Continental Europe, based on the Romanian law.

Historically in the United States we see the employment law being developed through collective bargaining. During the colonial and pre industrial eras to the 1865 Revolutionary War a master-servant production system was not the most fecund field for unionization. The same occurred in Brazil until the slavery production system ended in 1888.

Nevertheless, in the United States, we can clearly see an industrialization since the end of the 18<sup>th</sup> century in the northern part of the country. It happened in order to provide the essential goods for the new free country population which generated the first United States trade union, the Federal Society of Journey Men Cord Wainers, a shoemakers organization in Philadelphia in 1794.

In two hundred years of American work life from the early 19<sup>th</sup> century to the year 2000, the history shows that throughout 19<sup>th</sup> century American unions faced hard times from the Conspiracy Doctrine, which considered unionization a crime against common law Doctrine. That caused the United States courts to imprison many workers, until the organization of national unions. These were first set up by the Knights of Labor,

then by the American Federation of Labor (AFL) which later on, in 1955, joined the Congress of Industrial Organizations (CIO), forming the actual AFL-CIO, the federation of most of American unions.

On the other hand, Brazil witnessed an attempt of industrialization in the end of 19<sup>th</sup> century and beginning of the 20<sup>th</sup> century which gave place, even there, to the first unionization period in the southeast state of São Paulo with the anarchists Italian and Spanish immigrants.

At the same time, Brazilian government, giving up to the external (British) pressures over the poor labor conditions within the country like child labor, slavery and overtime work, issued the first statutes concerned with social issues and individual employee rights.

Elected President Franklin Delano Roosevelt's New Deal Doctrine and Policy was a landmark in the labor relations and employment relationship in the United States during the 1930's through the present.

Right after the collapse of the American economy due to the 1929 New York stock market crash, the unemployment rate in the United States reached about 25 percent of the total labor force, or about 13 million people. Of those, one third were between the ages of 16 and 24, and hourly wages decreased 60 percent.

Forced by high unemployment rates and following Keynesian Doctrine, President Roosevelt's policies tended to look to the workers from a more social perspective.

The 1935 National Labor Relations Act ruled for the first time the whole unionization process for the most part of the employees and after that, several statutes regulated individual employee rights and labor law.

Meanwhile, in Brazil, President Getúlio Vargas corporative policy, which reached the apices in 1943 CLT (Consolidação das Leis do Trabalho), was based on several foreign charters like Mussolini's Carta del Lavoro and the Mexican Constitution.

Although Getúlio Vargas came to power through a coup d'état, it is said that his popularity at that times legitimated some of his policies and he was known as the father of the poorest, because he created the whole social legislation that still exists in Brazil nowadays.

The American employment relationship system, which is based on a few individual employment rights and in strong collective bargaining, is flexible. Although a small percentage of the American labor force is unionized, a long-term growth in the economy together with a high-level skilled work force has made the American labor force very competitive. Therefore it has reached high levels of productivity and leading the economy to a full employment level.

The present work will be developed in three main parts:

1. The American employment relationship system through its sources of law;
2. How did the American employment relationship system make some influence in the creation of jobs and the next steps to improve the American employment relationship; and
3. A proposal for the Brazilian employment relationship system reform.

## **1. THE AMERICAN EMPLOYMENT RELATIONSHIP SYSTEM THROUGH ITS SOURCES OF LAW**

The American employment relationship system, as all fields of American law, is based on ancient British common law. Common law can be defined as the “legally binding rules or principles of justice developed in the course of history from the gradual accumulation of rulings by judges in individual cases, as differentiated from the kind of statute law embodied in special legal codes or statutes enacted by legislative assemblies or imposed by executive decrees.”<sup>1</sup>

This fact makes the American employment relationship system different from Brazilian employment law in the sense that it is referred always as a part of the civil law Doctrine, instead of being a Doctrine itself. The employment contract, as a consequence, is a civil contract between the two parts.

The American employment law is also a relationship combining rules imposed through the law by the courts and by government agencies expressing values of the society, habits and public policies.

Three types of legal rules exist regularly applied to the employment relationships. The first is the common law tort and contract Doctrines developed by the courts and sometimes incorporated into the statutes or modified for them. The second is the federal and state constitutional provisions that define the employees' and employers rights, mainly of the public servants. The third is a series of statutes, laws and legal acts.

## **1.1.COMMON LAW TORT AND CONTRACT DOCTRINES**

### **1.1.1. TORT**

The group of doctrines that exists under the name of " tort law " is varied and many definitions exist for the term tort. As general rule, we can say that " tort law " is based on the principle that each person possesses interests that the law should protect. When some of those interests are abased, the responsible person for the damages should pay a compensation for the person whose interests were abased. It is the principle of the civil liability. We can mention as examples of tort: assault, defamation, false arrest, intentional infliction of emotional distress, interference with contractual relationships and invasion of privacy. All those examples are applicable to the American employment relationship system.

Usually the burden of proof is of those who alleges the harm. However, the burden of proof can change depending on the tort type that it is intended to be applied.

Several tort types exist. The most applicable in the employment relationship are the intentional torts, in other words, those harms that occur of intentional actions that assume the risk of the damage that happened and the tort of negligence that needs three basic elements for its characterization. They are:

1. Care duty owed by the defendant to the plaintiff;
2. The breach of that duty by the defendant;
3. An injury to the plaintiff which was caused by the defendant's breach of duty.

### **1.1.2. CONTRACTS**

The employment contract, according to the definition of the common law, is that one in which a person renders services for other under a hire contract.

For a hire contract to exist, the three basic elements of the contracts should exist in general, according to the traditional doctrine. They are offer, acceptance, and consideration.



In an employment contract, offer means the employer's express or implied promise to pay for the employee's services. Acceptance can be either the act of working or the promise to do so. And consideration is the payment of wages and the benefit flowing from the services.

The American employment law does not seem to consider the employment contract as the special type of contract that Brazilian employment law does.

The biggest difference lays in the fact that for the American employment law, the contract of employment has a private feature. It is a civil contract under the common law rules and principles, while in the Brazilian employment law, employment contract has a public status, resulting that just a few clauses can be negotiated. Differently, the American contracts of employment can be deeply negotiated, according to the willingness of the parts, since it does not violate any statute or constitutional provision, or even a collective bargaining agreement.

But, as a trend, we can affirm that the American judicial system, which applies the common law principles, is becoming more sensitive to the changing of the times. American courts are tending more and more to consider employment contracts as different from the main part of civil contracts in the sense that it tries to rethink the limits on the assistance of the legal system to the employee who has been considered the weakest part in the employment relationship. It is widening the application of this principal more and more.

## **1.2. CONSTITUTIONAL PROVISIONS**

The constitutional provisions usually possess direct impact only on the public sector. However, the indirect impact of concepts of the Federal Constitutional in the private sector is very important.

The notions of the due process, also applied in collective bargaining, for instance, have been applied and redrawn by labor arbitrators in order to apply limitations in the employer power of discipline.

Preemption doctrines developed under the supremacy clause had great importance in a lot of areas.

We have to point out, however, that the specific rights of employers and employees in the private sector have been based more in other sources than in the own constitutions both state or Federal.

### **1.3. STATUTORY REGULATION**

The statutory regulation in the United States grew a lot through the 20th century. The American employment law is becoming more and more statutory and less usual, based on the common law.

Even in the United States, the statutory regulation is divided in two categories. The first is called labor law, whose statutes regulate the employee's collective action. The second is several statutes that do impose rights and duties on employers and employees even if there is not a union involved in the employment relationship.

#### **1.3.1 LABOR LAW**

First there should explained that Labor Law, as a part of the American Employment Law, means the group of rules that regulates the relationships among the employees, the union and the companies where such employees work. Labor is the term used to refer to the employees and the unions that represent them.

There are two principal statutes that regulate the rights and duties of employers and employees. The first is the National Labor Relations Act, known as Wagner Act, 1935, amended by the Labor Management Act, known as Taft-Hartley Act, 1947, applicable most to the private sector employees. The second is the Railway Labor Act (RLA), of 1926, amended in 1934, which regulates the collective bargaining between the employees and aircraft and railroad industries.

There is a third statute, the Labor-Management Reporting and Disclosure Act, known as the Landrums-Griffin Act of 1959, that regulates internal union subjects such as kickbacks and apprenticeships.

Many of the American states also regulate collective bargaining, but, in general, as NLRA and LMRA possess vast applicability in the whole American territory, these statutes usually prevail on the state ones. "The National Labor Relations Act is the key labor law that governs collective bargaining in the private sector in the United States."<sup>2</sup>

The following exhibit indicates the major features of the National Labor Relations Act, as amended<sup>3</sup>:

<i>Section</i>	<i>Provisions</i>
<b>National Labor Relations Act (NLRA; Wagner Act) 1935</b>	
1	<i>Findings and policy:</i> An endorsement of collective bargaining, worker self-organization, and selection of representatives.
	· <i>Definitions: Of employer, employee, labor organization, unfair labor practice.</i>
3-6	<i>National Labor Relations Board:</i> Its establishment, authority, funding, and structure.
	· <i>Rights of employees:</i> Includes rights to self-organize and select representatives for bargaining.
	· <i>Unfair (employer) labor practices:</i> Prohibits interference with employee's Section 7 rights.
	· <i>Representatives and elections:</i> Majority's selection is exclusive bargaining representative. Board can define appropriate unit, certify employee representative.
10	<i>Prevention of unfair labor practices:</i> Board can issue cease and desist orders, take "affirmative action, including reinstatement of employees with or without back pay."
11-12	<i>Investigatory powers:</i> The NLRB can issue subpoenas, examine witnesses, etc. Refusal to obey may result in court contempt proceedings.
13-16	<i>Limitations:</i> Act does not limit the right to strike.
<b>Labor-Management Relations Act (LMRA; Taft-Hartley Act) 1947 (amendments to NLRA)</b>	
	· <i>Definitions:</i> Added supervisor, professional employee, and agent.
	· <i>National Labor Relations Board.-</i> Expanded from three to five members.
	· <i>Rights of employees:</i> Required to refrain from activities listed in section 7.
	· <i>Unfair labor practices:</i> Creates 8(b), Unfair Labor Organization Labor Practices.
	· <i>Representatives and elections:</i> Separate standards for professional employees, craft groups, guards. Expanded and defined election's procedure.
Title 11	<i>Conciliation of labor disputes:</i> In industries affecting commerce; national emergencies.
Sec. 301	<i>Suits by and against labor organizations.</i>
<b>Labor-Management Reporting and Disclosure Act (LMRDA; Landrum-Griffin Act) 1959 (amendments to LMRA)</b>	
Title I	<i>Bill of rights of members of labor organizations:</i> Includes freedom of speech and assembly, protection from dues increase without vote, and improper disciplinary action.
Title 11	<i>Reporting by labor organizations:</i> Provides for reporting of officers' names, provisions for members' rights, annual financial statements.
Title III	<i>Trusteeships:</i> Defines reasons for trusteeships; provides for reports on all trusteeships.
Title IV	<i>Elections:</i> Guarantees regular local and national (and/or international) elections by secret ballot of all members in good standing.
Title V	<i>Safeguards for labor organizations:</i> Officials' Fiduciary Responsibility requires bonding for all individuals who handle funds or property.

This statute, the Wagner Act, regulates the strike right, creates exclusive jurisdiction for the unions, either in certain company or in various companies, it establishes procedures for the union representatives' election, it defines unfair labor practices and it regulates collective bargaining in other ways.

Later, in 1947, NLRA was amended by the Taft-Hartley Act, including unfair union labor practices, secondary boycotts and representation limits on supervisors.

Finally, the Landrum-Griffin amendments to NLRA, 1959, regulates the internal finances of the union and governance.

The collective bargaining in the aircraft and railroad industries is regulated by Railway Labor Act.

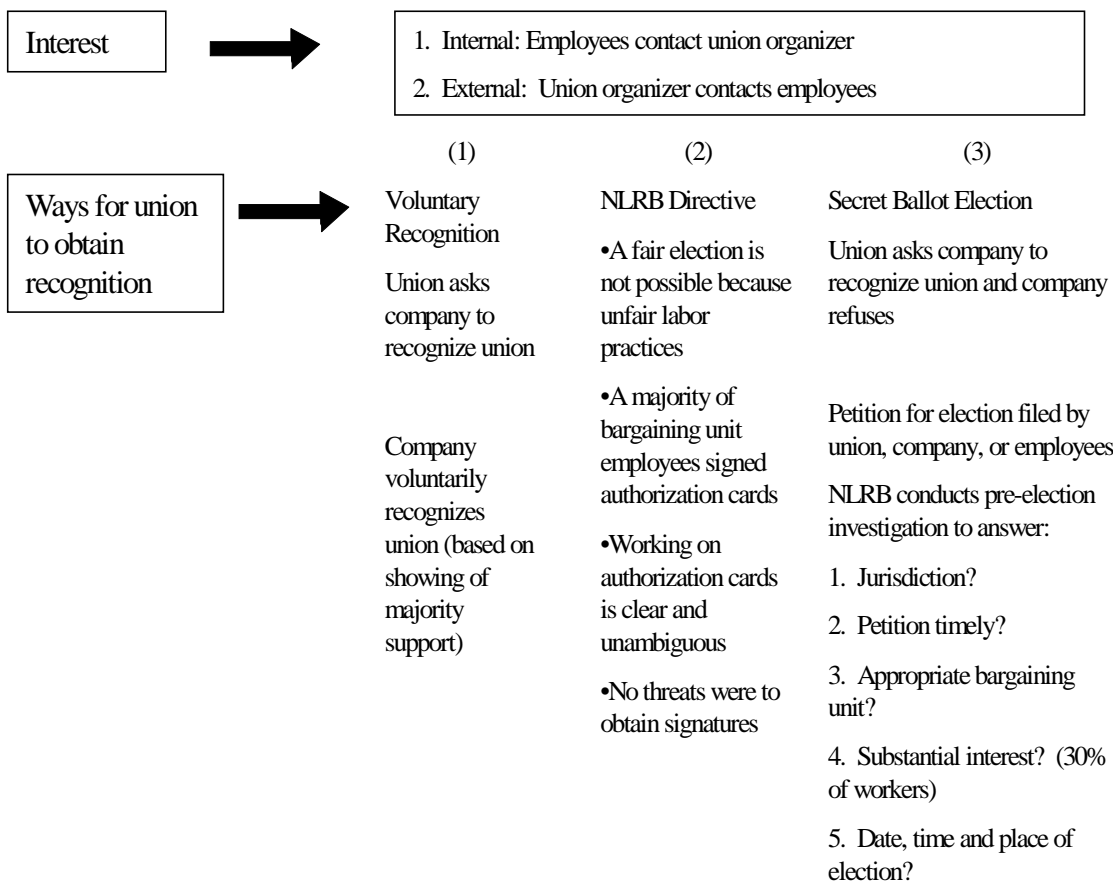
The American system of Labor Law is based on the principle of one union per company. So, the employees of certain work place, since still non-unionized, can opt to form its own union, it is not mandatory, though. However, when unionized, the employees usually possess more rights than the non-unionized employees.

Such a system practically creates two large groups of employees in the United States. They are unionized employees, with several rights arising from the collective bargaining agreement, and the non-unionized employees, with few rights written in the applicable statutes to the employment relationship and in the contract between employee and employer.

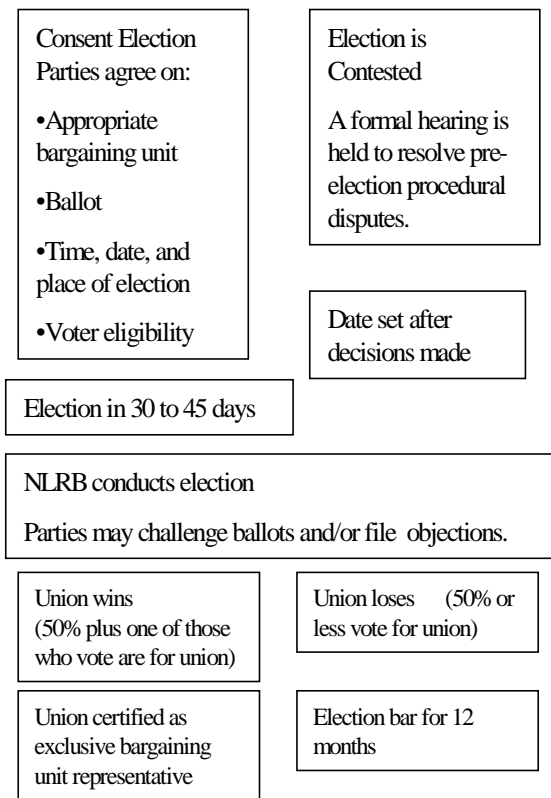
Therefore, Labor Law impact in the individual employment relationship is very large. First because NLRA, for being applicable just to unionized environments, when defining to these workers what is unfair labor practice, protect them against employers and against their own unions of the abuses that these can come to make. NLRA regulates the limits on employer surveillance of employee union activity, as well as the limits for the practices of the unions to encourage or discourage employees in their participation. Second, the condition of the employment relationship of those employees represented by a union, as it is placed in collective terms, is a subject of federal law (NLRA), not state (Common Law, mainly), increasing or reducing the protection given to the employee, always depending on each case.

In general, the form in which the disputes arise from the employment relationship is resolved also varies according to a unionized or non-unionized environment. In general terms, if the employee is unionized, any dispute will be solved in a procedure of grievance or arbitration. If the employee is non-unionized the disputes will be resolved in a state court.

In the next pages, a generic model of how is the union representation in the work place<sup>4</sup> and the main administrative American agencies, which work with the subject:



**Type of Election**



Union Obligation: Duty to bargain with company in good faith and represent all B.U. employees fairly

Company Obligation: Duty to bargain with union in good faith and recognize union as the exclusive B.U. representative for employees.

### Important Administrative Agencies:

1. National Labor Relations Board (NLRB): Administers the National Labor Relations Act including the Taft-Hartley and Landrum-Griffin amendments. Key activities include designating bargaining units, conducting representation elections, and investigating and adjudicating unfair labor practice charges. The NLRB includes national and regional boards.
2. U.S. Department of Labor (DOL): Serves as the advisor to the President on labor issues. Conducts research and collects data on labor matters. Oversees the administration of a variety of regulations concerning equal employment opportunity, health and safety, and internal union affairs. Maintains a large staff in Washington, DC, and regional offices.
3. Federal Mediation and Conciliation Service (FMCS): Offers mediation services to labor and management in their collective bargaining activities.
4. National Mediation Board: Administers the Railway Labor Act. Oversees union representation and provides mediation services to the parties during impasses.
5. State and local agencies: A variety of agencies regulate the conduct of public sector bargaining. Some of the agencies provide mediation services to parties engaged in collective bargaining in both the private and public sectors. Agencies also oversee the administration of state regulations dealing with employment conditions.<sup>5</sup>

### **1.3.2. INDIVIDUAL EMPLOYEE RIGHTS**

This concept defines all rights that an employee has individually aside from those that arise from a collective bargaining agreement.

As said before, the American workers are classified in two different types, according to the rights they have and according to the way disputes are solved.

In the American Employment Law it has been an increase in the individual employee rights throughout the 20<sup>th</sup> century through statutes. Most of them are directed at public policy to guarantee skills training during layoff periods, equal employment opportunities for both men and women, non-discrimination on basis of race or religion, and disabilities.

Those statutes affect the employment contract in the sense that they establish some rights of the employee that just cannot be forgotten under the principle

of “*pacta sunt servanda*” from the Civil Law. That means that if some clause is against any section of those statutes it is considered illegal and overruled by the courts.

One of the most important statutes that regulates individual employment relationship is the Fair Labor Standards Act (FLSA), 1938, as amended. This statute determines minimum wage and overtime standards to the major part of the American employees.

Minimum hourly wage in the United States means that a full time worker can maintain the minimum standard of living necessary for health, efficiency, and general well being. Nowadays, the minimum wage in the United States is US\$ 5.75 an hour, for the major part of the workers.

Overtime payment is meant to be at least “time and a half” of the normal wage payment in order to increase the number of people employed and to improve the working conditions. Overtime is considered when somebody works for more than 40 hours a week.

There are some exceptions to the FLSA. For example, white collar workers, i.e., those considered as administrative, executive, professionals, and outside salesmen workers, are not covered for this statute.

Other important statutes in the American Employment Law are those that refer to discrimination. The 1870 and 1871 Civil Rights Act has been the basis for several court decisions in the employment matter. But those statutes do not refer specifically to employment. They refer to civil rights in general.

The very first statute, which had a specific topic about discrimination in the employment relationship, was the previously mentioned National Labor Relations Act. It considered as an unfair labor practice for an employer “by discrimination in regard to hire or tenure of employment or any term and condition of employment to encourage or discourage membership in a labor organization”<sup>6</sup>.

During the 1960’s, laws about discrimination had appeared very fast because of the political movements of that time. Following this trend, there is the 1963 enactment of the Equal Pay Act, which requires employers to pay the same wages for the same work for both men and women.

The passage of the Civil Rights Act of 1964 was a historic mark in discrimination matters in the United States. It has several rights for all the civilian population and amongst them. It also bans discrimination on the basis of race, color, religion, national origin, or sex. Again it is not a specific employment law statute, but it plays an important role for the work place.

Discrimination on the basis of age, for those who are 40 years old and over, is prohibited under the 1967 Age Discrimination in Employment Act provisions.

There still is the 1990 Americans With Disabilities Act, which forbids discrimination against qualified individuals with disabilities.

Normally, the Equal Opportunity Commission (EEOC) is the American agency in charge of this subject. A person who feels is being discriminated at work, in many ways, can whistle-blow this employer and then the agency will start the procedures to investigate the case. Also, the employee can directly sue this employer in both state and federal courts through a private civil action.

If the discrimination is based upon labor practices, the case goes to the National Labor Relations Board (NLRB), the agency in charge to deal with all labor matters.

Although it is possible to the employees to sue a firm or company to complain about it in federal or state agencies, or even in federal or state courts, it seems that the American government concentrates its efforts in good policies to achieve equal employment opportunities for all the labor force, trying to prevent possible conflicts in the employment relationship. The statutes are more likely to create public policies than to generate individual employment rights.

The prevention of injury and disease is controlled under the provisions of the Occupational Safety and Health Act (OSHA), of 1970. The Federal Department of Labor has been enforcing this statute through the Occupational Safety and Health Administration agencies.

According to OSHA, each employer “shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees” and “shall comply with occupational safety and health standards promulgated under this chapter”<sup>7</sup>. Those are the two most import duties imposed on the employers.

Also in the case of OSHA, the act itself provides several policies, which are carried by the United States Department of Labor in order to prevent hazards in the work place. In spite of this, an employee can always whistle-blow the fact that his/her employer is not complying with its duties and a Labor Inspection will take place to enforce the law.

An interesting protection that is very well developed in the American employment relationship system is the privacy and reputation protection. Although there are no specific Employment Law statutes about this matter, the American employees have been relying in the judicial system to protect their rights.

There are several cases involving employers and employees based in common law tort principles like, for instance, revealing confidential medical or



personal information about employees<sup>8</sup>; reading employee personal mail<sup>9</sup>; or even interrogating an employee about dating a competing firm's employee<sup>10</sup>, all of them led to damages to the employees involved.

There are even some Federal statutes that regulate the subject and have been applied to the employment relationship.

There is the Freedom of Information Act of 1966 (FOIA)<sup>11</sup>, which rests in four main premises:

1. an informed electorate is essential to safeguard democracy;
2. publicity is a protection against potential official misconduct;
3. privacy is a fundamental right and corresponds with a need to restrict government's intrusions into private individual's affairs; and
4. secrecy is part of bureaucracy and many not facilitate organizational efficiency.

Other main statute applied to privacy and reputation in the employment relationship is the Privacy Act of 1974, which regulates the information collected, maintained, used, and disclosed by the federal agencies.

Another statute used in the employment relationship concerned to privacy and reputation is the Fair Credit Reporting Act of 1970 (FCRA), which regulates consumer-reporting agencies. It also practices in preparing and disseminating credit reports, for example, for employment purposes as employers normally request consumer reports of their employees, and use them to take decisions.

Under the Omnibus Crime Control and Safe Streets Act of 1968, which was aimed to diminish violence in public transportation and streets, appeared some other individual employee rights. These are the prohibition for an employer to listen on an extension telephone to an employee's conversation and bans the use of disclosure of telephone conversations intercepted in violation of the act.

The Employee Polygraph Protection Act of 1988 intends to protect workers from being fired based solely on apparels like lie detectors or alike.

The Drug-Free Work Place Act of 1988 (DFWA) was made to provide a drug-free workplace in those firms which have been granted with funds from a federal agency or those which contracts a federal agency.

Still, there are several constitutional protections that may affect privacy and reputation in an employment relationship in the private sector.

In the First Amendment, the individual employee rights are more linked to three main categories:

1. “Patronage” cases, or those involving employees who have been fired, laid-off, or disciplined because of their political affiliation or beliefs;
2. “Expressive conduct” cases, where the employment status has been adversely affected by engaging in spoken, written or another form of expression; and
3. “nonconformist conduct” cases, in which the employee has had adverse employment action because of his/her private conduct that the employer regards as immoral or improper.

The Fourth Amendment protects citizens from unreasonable “searches and seizures” and its basic purpose is to protect individual’s privacy and dignity. It is most applicable to public employees than to private ones.

And there is the Fourteenth Amendment that protects employees in various ways. It is a source of protecting employee’s privacy.

Both state and federal courts though, enforce all those constitutional fights. Employees have the burden of proof in this case and have to sue their employers in order to see their rights respected.

As it was shown, most of the statutes provide substantive rights. Some of them can be enforced through administrative agencies such as the National Labor Relations Board or the Occupational Safety and Health Administration, others have to be discussed in state or federal courts.

In order to have a more complete overview of the American employment relationship system, it will be explained the termination of employment, too.

Normally, if the employee is a non unionized worker, he/she is subject to a common law doctrine called employment-at-will, applied by the American judicial system.

The employment-at-will doctrine says that both employer and employee are free to finish the employment relationship at any time, for any reason and without liability, since this termination does not violate any law, constitutional or statutory. This means that non unionized workers have no recourse if they are dismissed, unless any of the previous shown statutes or constitutional provisions has been violated.

State courts decided for employment-at-will doctrine in the following situations:

1. No written contract, no specified term of employment;
2. If there is a expired collective bargaining agreement; or
3. Employee handbook is insufficient to establish exceptions to the employment-at-will doctrine.

The presumption that employment is terminable “at will” seems to be held since the middle of the 19<sup>th</sup> century. In that time, the courts used to be very conservative and applied employment-at-will doctrine for most part of the employment contracts. Nowadays, the American courts are narrowing the application of the employment-at-will doctrine.

There are various state courts decisions that have awarded employees with pay-back and reinstatement on the following grounds:

1. When an employer’s written policies constitute an implied contract, providing employment security;
2. When a firm promises employment security in an oral or written agreement; or
3. When an employee is dismissed for refusing to violate a statutory policy.

In the other hand, unionized employees have their employment contract also influenced by collective bargaining agreements. This have as mandatory subjects of bargaining, according to the NLRB, the conditions of employment which normally provides that an employee can only be discharged if there is a just or good cause for it.

Defining just cause for a dismissal has been an exercise of the labor unions, employers, and courts. Normally, the United States judicial system considers as good cause for dismissal an inadequate job performance, a job-related misconduct, an off-the-job conduct, an after acquired evidence or as part of the business needs.

In these cases, it is an employer’s burden of proof. If there is no evidence of a just cause has been happened, the union proceeds to a grievance procedure in the NLRB as a part of the protection that unionized employees have.

One of the most important parts of the American employment relationship system is the unemployment compensation and the adjustment and retraining for the workers.

The Federal Unemployment Compensation Act is the statute, which regulates how the American employees get unemployment compensation if they become unemployed through no fault of their own.

The American unemployment insurance system has its origin in the 1930's, during the Great Depression that followed the 1929 New York stock market crash and has as its main goals:

1. To enhance employment opportunities through a network of employment service offices throughout the nation, where job seekers and job openings can be matched efficiently;
2. To stabilize employment by encouraging employers to retain employees during short periods of economic downturns through the experience rating features of state statutes<sup>12</sup>; and
3. To minimize the economic loss of unemployment by paying benefits to the unemployed<sup>13</sup>.

It is run by both federal and state government and employee's eligibility for benefits depends on the following requirements:

If the employee

1. Has earned a minimum amount of wages in a job covered by the unemployment compensation tax system during the period prior to becoming unemployed;
2. Is currently out of work;
3. Is able and available to work; and
4. Has registered at an appropriate government-operated employment service office, from which the applicant may be referred to prospective employers.

All the benefits are paid weekly in a number that should not exceed 26 weeks, in a regular economic growth rate.

A very interesting statute is also the Worker Adjustment and Retraining Notification Act of 1988 (WARN), which requires employers with more than 100 employees 60 days advanced written notice to the affected employees or to their union and state and local government before a plant closing or "mass layoff".<sup>14</sup>

This is an attempt to regulate collective layoffs or dismissals in order to encourage a collective bargaining to set some rules on how this layoff will happen, whom it will affect, and how those employees can be adjusted.

As it was briefly overviewed, the American employment system is very complex, rich, and as it is based on a mixture of the common law principles applied by the courts, statutes that create some rights, policies to be implemented by the governmental agencies, and some constitutional principles. It tends to be very flexible because the social agents can change interpretation much faster than if the American employment law was only based on statutes and legislation.

The next part of the present paper will overlook the evolution of the American labor force and unemployment rates, how the American employment law made some influence in those rates, and the next steps that the American government tends to adopt, in order to improve the employment relationship.

## **2 HOW DID THE AMERICAN EMPLOYMENT RELATIONSHIP MAKE SOME INFLUENCE IN THE CREATION OF JOBS AND THE NEXT STEPS TO IMPROVE THE AMERICAN EMPLOYMENT RELATIONSHIP.**

As shown in the previous part of the present work, the American employment law is quite flexible in the sense that hiring and dismissing employers is normally very easy within the United States, and it has normally very low cost too.

The employment-at-will Doctrine is widespread applied, in general terms, and the cost of labor is normally concentrated in the wages the worker earns rather than in mandatory contributions or taxes.

The American work force has been growing constantly since the end of the World War II. That is partly due to the post war baby boom generation and partly because of the great immigration flow after that war. Since the late 1970's though, as the latest baby boomers entered the labor force, its growth rate is decreasing slowly.

In the other hand, the number of women in the work force is increasing too. As a general trend of it, we can face the increasing of the number of women with young children in the labor force, increasing the demand for broader social rights, for example.

It is also important to look at the educational attainment in the United States labor force, and it has been growing over the last 20 years.

The average number of years completed by the workers in 1970 in the United States was 12.4, and in the same year, 63.9 percent of the labor force was graduated from high school, while 12.9 percent was graduated from college. In 1990 the average number of years completed by all the American workers was 13, beyond the high school level. In 1993, 29 percent of the total work force had a college degree, contrasting to the previous 12.9 percent in 1970. Brazil in 1996, instead, had an average of 5 years of study among adults aged 18 years and older, according to Psacharopoulos and others.<sup>15</sup>

Those numbers show a highly educated labor force in the United States. As result of these highly skilled workers, there are higher levels of productivity too. Thus, as a result of higher levels of productivity combined with a constant growth of the economy, wages increase.

Globalization is a new term used for a traditional practice: trade among the countries. In the 20<sup>th</sup> century the European States started to put tariffs barriers down in March, 25<sup>th</sup> of 1957, under the Treaty of Rome, which was the beginning of today's European Union. After that, as a direct result of the end of the cold war when the Berlin walls were put down in November, 9<sup>th</sup> of 1989, several countries all around the world created free trade zones and the trade all around the world increased faster since then.

In 1993, North American Free Trade Agreement (NAFTA) set up a free trade zone within the United States, Mexico, and Canada and since then the commerce among those countries grew up considerably.

Competition is the key word to globalization. Firms open plants where the costs are smaller to them. But at the same time, technology plays a fundamental role in these days. Thus, countries that have a more qualified labor force will naturally have more comparative advantage with the globalization.

But as wages in the developed countries are higher than in developing countries, some firms tend to transfer their plants to those countries. The production cost becomes cheaper and the competitiveness increases. To the United States, that does not mean higher unemployed rates.

Unemployment rates have been always related to economic growth. The American economic growth during the last 9 years has been enough to create jobs in order to absorb almost the whole labor force.

So, in order to help to create jobs in a so diversified labor market, as Brazil's, it is fundamental to maintain high economic growth rates. The main reason for the actual low unemployment rates in the United States is its high long-term rates of economic growth, absorbing all the labor force.

The exhibit below shows the growth of the American Gross Domestic Product and the unemployment rates in a period of 10 years compared to the growth of the Brazilian GDP and unemployment rates in the same period of time:

Year	US GDP Growth	US Unemployment	Brazil GDP Growth	Brazil Unemployment
1990	1.8	5.6	-4.4	4.2
1991	-0.5	6.8	1.0	4.8
1992	3.0	7.5	-0.5	5.8
1993	2.7	6.9	4.9	5.3
1994	4.0	6.1	5.9	5.0
1995	2.7	5.6	4.2	4.6
1996	3.6	5.4	2.7	5.4
1997	4.2	4.9	3.6	5.7
1998	4.3	4.5	-0.1	7.6
1999	4.2	4.2	0.8	7.6

Sources: Brazil, FIBGE/FGV/SECEX, USA, U.S. Department of Commerce/Bureau of Economic Analysis/The Economic Statistics of the White House

Under a macro-economic point of view, a situation of full employment would be when “the level of employment of which there may exist frictional unemployment but at which resources are otherwise fully utilized in the production of output. It occurs when all workers willing and able to work at the current market wage find work.”<sup>16</sup>

Structural unemployment is understood as when there are changes in the basic characteristics of a market such as new technologies, new products introduced in the market that substitutes old, and changes in the consumer tastes.<sup>17</sup>

Frictional unemployment is understood as the while that takes to an employee to find another job when this worker leaves the previous one.

The United States has been regulating also the labor market through some policies that affected it growth rates. In 1946 there was the Employment Act when the federal government has been charged with the duty of promoting “maximum employment”. And finally, in 1978, the United States Congress has committed itself to full employment by passing the Full Employment and Balance Growth (Humphrey-Hawkins) Act.<sup>18</sup>

Thus, as a result also of those policies and mainly all the general situation of the American economy in these days, there is a situation of full employment.

The American labor force is well trained and educated and the United States has been investing a large amount of its budget in R&D. So the American labor market is likely to change very fast and easily, according to the necessities of the economy. In spite of this, there are plants and work places closing down within the United States and moving to other countries, like Mexico, Indonesia, and Thailand, where wages and costs are lower. The American economy has earned a lot with globalization and the unemployment rate has been shrinking in the past 8 years.

Another point to be stressed is that there are still a few substantive laws that guarantee worker's rights. The courts, as already said, normally apply the employment-at-will doctrine at the termination of the employment relationship. The legislation in the United States is quite flexible and the costs for hiring and for dismissing an employee are quite low, compared to other countries like those in European Union and also with Brazil.

Nevertheless, the American society is a very competitive settlement, driving people's behavior to a more individual perspective rather than a collective one. Also, it has been facing a de-industrialization of its economy, shrinking the number of blue-collar workers, more likely to join unions, and the growth of service sector, raising also the number of white-collar workers, more individualistic.

Another phenomenon is the growth of female workers in the labor force. So, all these conditions together make the unionization rates in the United States falling from a year to another. In 1998 the union membership among the total labor force was 13.9 percent against the maximum unionization rate of 35.5 percent in 1945.

But as the American economy is facing a boom, the American government, is interested in studying the labor market as well as the changes in the labor force due to the globalization process. The Secretary of Labor Robert B. Reich and the Secretary of Commerce Ronald H. Brown announced on March 24, 1993 the Commission on the Future of Worker-Management Relations. This commission was composed by several known American eminent professors, politicians, and managers, and had as its chairman John T. Dunlop, the former 1975-76 U.S. Secretary of Labor, whose was how the commission was best knew.

So, the Dunlop Commission mission is as follows:

“The future living standards of our nation's people, as well as the competitiveness of the United States, depend largely on the one national resource uniquely rooted within our borders: our people – their education and skills, and their capabilities to work together productively.”<sup>19</sup>

And, as the primary conclusions that the commission had are these twenty-five critical factors in the American labor market:

1. A long-term decline in the rate of growth of productivity;



2. An increased globalization of economic life, reflected in trade and capital flows, and immigration;
3. Increased competitiveness of U.S. firms in the international market place in the late 1980s and early 1990s, due to changes in the unit labor costs and exchange rates;
4. Changes in the work performed due to changing technology;
5. A shift in employment to service-producing sectors from goods-producing sectors;
6. A shift in the occupational structure of the workplace toward white collar jobs that require considerable education;
7. Millions of establishments and firms of different sizes, whose workplace practices and outcomes differ depending in part on the number of employees;
8. Turbulence in many product and financial markets due to deregulation and changes in governmental cutbacks in defense or other programs;
9. A higher proportion of Americans working than ever before, due in large part to the movement of women into the work force;
10. An increased minority share of the workforce;
11. Increased years of schooling by the workforce;
12. A changed aged structure of the workforce as the “baby boom” generation ages;
13. An increased flow of immigrants from developing countries into the United States;
14. Substantial creation of jobs but high unemployment for the less skilled and considerable insecurity about jobs;
15. Stagnant real hourly compensation, with falling real compensation for male workers;
16. A rising gap in earnings between higher paid and more educated or skilled workers and lower paid and less educated workers;

17. A growing number of low wage fully employed workers whose living standards fall below those of low wage workers in other advanced countries;
18. Annual hours of work that exceed those in other advanced countries except for Japan;
19. A declining gap in the earnings of men and women, but stagnation in the gap between non-White and White workers;
20. A growing number of jobs that diverge from full-time continuing positions with a single employer;
21. A large growing population for whom illegal activity is more attractive than legitimate work;
22. Stagnant rates of occupational injury and illness and increased workdays lost per full-time worker, with increased workers' compensation costs;
23. A decline in the prevalence of collective bargaining;
24. Fewer strikes or lockouts;
25. Increased government regulations of the workplace.<sup>20</sup>

That stresses the worries of the United States government about the future of its labor force. Since the 1935 Wagner Act, the American policy has been to encourage the practice of collective bargaining. That has been the most common way for the American workers to reach some higher standards within their employment contracts. During the 1990s, though, the increasing of regulation in the employment market has been substantial and can be seen as a trend in the American employment law. The focus has been changing from a collective prospective to a more individual prospective.

Another conclusion of the Dunlop Commission is that the participation of the American workers has to increase to more work places if the American economy is to be competitive at higher standards of living in the 21<sup>st</sup> century. This has to be encouraged by continued innovation in the employee's participation in order to provide them with ready access to independent representation and collective bargaining.

A great feature of the American employment market has always been its flexibility. It is expressed through various ways. The employment-at-will doctrine is one of the most important features but the Dunlop Commission also mentions the contingent work. As contingent work the Dunlop Commission considers all the independent contractors and part time, temporary, seasonal, and leased workers.

The Commission sees that the percentage of the work force in contingent work has been increasing in recent years. This change is according to the Commission both a healthy development and a reason for concern.

In one hand it makes the work market more competitive and it allows firms to maximize work force flexibility to adjust its industrial production methods more quickly. Also, it helps to generate income to more workers. In the other hand, contingent workers have normally fewer rights and earn smaller wages per hour than permanent and full-time workers. The expansion of contingent workers has contributed also to increase the sense of insecurity among workers and to increase the difference between high and low wage workers, according to the Commission.<sup>21</sup>

So, as a conclusion of the inquiries of the Dunlop Commission, it was appointed also 10 main goals for the 21<sup>st</sup> century to maintain the American work force with high productivity and to improve its quality of life.

The 10 main goals are:

1. Expand coverage of employee participation and labor-management partnerships to more workers and more workplaces and to a broader array of decisions;
2. Provide workers an non-coerced opportunity to choose, or not to choose, a bargaining representative and to engage in collective bargaining;
3. Improve resolution of violations of workplace rights;
4. Decentralize and internalize responsibility for workplace regulations;
5. Improve workplace safety and health;
6. Enhance the growth of productivity in the economy as a whole;
7. Increase training and learning at the workplace and related institutions;
8. Reduce inequality by raising the earnings and benefits of workers in the lower part of the wage distribution;
9. Upgrade the economic position of the contingent workers;
10. Increase dialogue and learning at the national and local levels.<sup>22</sup>

As a conclusion of this part of the present work, it can be affirmed that the American work force is highly competitive, which was an asset in a globalized economy. From one point of view, flexible legislation also allowed the American labor force to be

very agile. Changing the clauses of the contracts is very easy, according to management will and job practices. It creates many kinds of part time and short-term jobs.

The American employment law is mainly based on the common law doctrine, so it is easier to change the court's decisions. A large part of the law is based on custom itself, and as customs change, so change the court's decisions. That makes the labor market still more flexible.

But, in the other hand, there are concerning of the American government with the working conditions of its labor force. Actually, when the economy is booming and the curves of supply and demand for labor are intersecting, meaning a situation of full employment, plus a highly educated work force, the equilibrium between capital and labor is quite close to the ideal situation. That gives power enough to the employees negotiate their employment contracts in a better situation.

The American government aims to guarantee this equilibrium even when the economy is not growing that fast. It is trying to guarantee fair labor practices for the future.

Still better situations can always be achieved for the American work force. As a result of this concerning there is the conclusions of the Dunlop Commission to encourage unionization and a higher participation of the workers in the collective bargaining process. And as another goal for the entire country is the long-term codification of the employment law, in order to protect the workers in a more complete way.

Historically, workers achieve rights and better standards of living by gathering themselves and acting collectively. That is the opposite way the American economy and labor force are running to.

This is the major role of the unions, i.e., to guarantee better conditions for its members. And also, as a result, to guarantee better conditions of life, making the whole society better with this. That is why it is very important for the American society, at this point, to stimulate unionization and also a codification of the American employment law. This will dominate the future in the American employment relationship, economy, and society.

The American employment law tended in the last century to be concentrated in the public policies rather than in the individual employee rights and it reached great results so far. Nevertheless, more and more individual employee rights are appearing in the American statutes. That is a natural and legitimate pressure of the society for better conditions in work.

The law searches for social peace, and when a society see itself as an unfair place it is on risk. That is what the law tries to diminish. The employment law always tries to guarantee a minimum standard of living. It is meant to guarantee that

competition can work in a fair way. And that is why the American government is concerned in raise the unionization rates amongst the American workers and the Dunlop Commission concludes by suggesting a codification of the employment law in the United States.

By trying to regulate the labor market through the employment law, the American government is trying to guarantee the fair play and fair conditions to everyone.

### **3. A PROPOSAL FOR THE BRAZILIAN EMPLOYMENT RELATIONSHIP REFORM**

Brazil has been passing through a significant and fast change in its economy for the last decade. Since the 1988 Federal Constitution has passed, the country faced democracy again, after almost 25 years of military regime.

Economic openness from 1990 increased competition between the Brazilian and the imported goods. This fact made some of the Brazilian manufactured sectors suffer severe times in order to become more competitive and productive too. Despite of the fact that in long term this can be considered an asset, in short and medium terms some firms wracked and went to bankrupt, increasing considerably open unemployment and the informal market, which jumped from 52.0 % in 1990 to 60.4 % of the total labor force in 1997, according to the International Labor Organization.

Economic adjustment should have been done more slowly and in phases, in order to leave the labor force adjusts itself as a whole. The Brazilian work force is very diversified, though. There are very competitive sectors but there still are some sectors, which need highly developed training programs. Those are the sectors of the economy, which suffer more with an open economy, globalization, and competition.

The Brazilian employment law has been appointed as one of the obstacles for the economic development. There are some sectors of the Brazilian society that advocates a complete change in the Brazilian employment law, extinguishing most part of the actual employee's rights and leaving the regulation to the market. In the other hand there are some sectors of the society, which does not want changes at all.

But, as one of the most important principles of the law is that the law itself changes always according to the facts, the Brazilian employment law does need a reform. This reform should be deep and strength enough to keep basic employees rights, maintaining the necessary protection that workers must have, but should also empower unions and encourage free and fair collective bargaining, as one of the tools to make the Brazilian employment law more flexible and at the same time still protective to workers.

This part of the present paper will describe the Brazilian employment law system, the international agreements signed by Brazil and the necessary reforms to be achieved.

### **3.1. THE BRAZILIAN EMPLOYMENT LAW**

The Brazilian employment law, differently from the American, was constructed under the European continental doctrines. It means that it is strongly based on statutory legislation. Nevertheless, as it was already said, the Brazilian employment law has the same sources of law as the American. What changes is the intensity of the use of them.

The Brazilian doctrine also makes an initial distinction between individual employee rights and collective bargaining rights, or labor law. Through the last century, during the industrialization of Brazil, one can also notice the major part of the construction of the Brazilian employment law.

The Industrial Revolution in the XVIII century has brought mainly to the children a situation of total de-protection. With the issue of the 1802 Moral and Health Act in England, known also as the Peel Act, there is the birth of the employment law as it is today. The legislation ordered a maximum of 12 hours a day work to the children. After that, the British legislation forbid child labor for those under 9 years old in 1819 and restricted teen labor for those under 16 years old. France forbid child labor in mines in 1813 and in 1841 it was illegal child labor for those under 8 years old. Germany voted a law, which forbid also the child labor for those less than 9 years old and restricted to a maximum of 10 hours a day of work.

In the beginning of the 20<sup>th</sup> century it appears the social constitutionalism. It was an international movement, which considered one of the main concerns of the government to promote social justice including fundamental social rights in the constitutions of the countries. The first one was the 1917 Mexican constitution. In this constitution the article 123 with 31 sections created the 8 hours a day right, the maximum night shift of 7 hours, forbid the child labor for those under 12 years old and limited to 6 hours a day the work of those under 16 years, it created also the minimum wage, the safety and health administration, the weekly paid day off, the overtime payment, the protection to maternity, the arbitration to work place conflicts, the right to organize collectively, and the right to strike. The 1919 Germany constitution of Weimar also followed the trend with a model very similar to the Mexican constitution and influenced other European constitutions too. In Italy, 1927, appeared the “Carta Del Lavoro”, which is the fundamental document of the fascist and corporativist doctrine which was known as a strong state interference in the employment relationship.

All those documents influenced the Brazilian employment law during its formation and construction, mainly during the first half of the 20<sup>th</sup> century.<sup>23</sup>

In Brazil, the employment law also began with protection to the children as an influence of all the European movement against the exploitation on children and workers in general, which was leading the societies to a situation even worst than before the Industrial Revolution.

In 1891, the Decree number 1313 created the Labor Inspection in manufactures work places and also forbid night shift labor for children under 15 years old. It also limited the day shift child labor up to 7 hours a day for those under 12 years old.

After that, there is a short period when the labor was seen as a part of the civil law, after the issue of the Brazilian civil code in 1919. At the same time, some unions started to take place mainly in the industrialized southeast states of Brazil like São Paulo.

In May 1<sup>st</sup>, 1943, President Getúlio Dornelles Vargas issued through decree-law number 5452 the Consolidação das Leis do Trabalho. It meant the codification of several preexistent laws for some of the workers categories, which with the codification were extended to all the categories of employees. It was influenced mainly by the constitution of Mexico, the constitution of Weimar, and by the “Carta Del Lavoro” for the labor law principles.

It was a landmark in the Brazilian employment law and it is still the main document of the Brazilian employment relationship system. The Brazilian employment law will be described as the doctrine has separated it, in individual employee rights and labor law.

### **3.1.1. THE BRAZILIAN INDIVIDUAL EMPLOYEE RIGHTS.**

The Brazilian labor norms are in the Federal Constitution, in the Consolidação das Leis do Trabalho (CLT) and in other laws extra CLT.

In the Federal Constitution of 1988 the worker's basic rights are fastened. Such norms cannot be revoked individually by the will of the parts or through collective bargaining. The only exception is the one that concerns the workday and the remuneration, whereas it can be flexibilization through collective bargaining agreement.

Brazil admits as a fundamental principle of its labor legislation the established in the Agreement of Versailles in 1919 that the labor cannot be considered a commodity.

Another principle adopted by Brazil is that the State has the duty to guarantee certain minimum rights to the worker. The parts are not able to negotiate in different way: minimum wage, maximum eight hour workday, paid weekends, annual paid vacation, conditions of safety and health of the worker, compensation for unfair dismissal, free exercise of the union activity, more rigorous levels of protection to the teenagers work and to the women work, and others. It is all expressed in the Federal Constitution of 1988, under the articles number 7 and 8.

Therefore, it admits the free hiring and the free worker's dismissal since obeyed the minimum rules established in the laws that fasten a minimum floor of protection unrenouncable by the worker.

The concept of employment contract is stressed in CLT. Differently of the United States in which there are several different concepts for employee and employer, in Brazil the fundamental concept is that the employee is that person that exercises subordinate activity to an employer by certain wage. The principal point is the juridical subordination, meaning that somebody, the employee, is under the orders of an employer during certain lapse of time to receive a certain wage.

The employment contracts in Brazil follow in general the principle of the continuity. This means that as a principle, every employment contract has no termination term, but the employer is able to dismiss the employee at any time, by paying a compensation for this reason.

CLT still obliges, in case of termination of the employment contract with no term, a notice of at least 30 days to the employee.

CLT also admits contracts with fixed term for work or service whose nature is temporary up to 2 years maximum period.

The Temporary Work Act, Law n. 6019, 1974, admits employment contract for extraordinary increment of service or for the temporary substitution of personal permanent of the company.

There still exists the Law n. 9601 of 1998 that establishes one more contract modality for fixed term: for increment of work positions, in an attempt of reducing the unemployment rates.

The workday in Brazil is established in the Federal Constitution of 1988 and in CLT. The maximum is 44 hours a week, or 8 hours a day. It can still exist overtime, and it is possible also the compensation of those overtime period, instead of



paying for it. This can be done through the bank of hours depending on a collective bargaining agreement.

CLT still requires annual vacation of 30 days, as general rule, after the first year of the employee's work and since he/she has not lacked in the service without just cause for more than 5 days on that year of work.

The Act n. 605/49 also created the right to the year-end one-salary bonus that also is stressed in the Federal Constitution of 1988. This means that in the end of the year the employees are entitled to receive one more wage divided between the months of November and December of the worked year.

The Act n. 8036/90 established the compulsory nature of every employer to deposit monthly in a special account the equivalent to 8% of the wage of each employee's payroll. This is the severance-paid fund, also a constitutional right of all employees.

Therefore, in each termination of the employment without just cause of a non fixed term contract, the employee can take out the money deposited in the special account and the employer still has to pay the equivalent to 40% of the total deposited as a compensation for the dismissal.

As well as in the United States it exists in Brazil the notion of the just cause for the dismissal. In this case, if a just cause exists to the termination of employment, the employee loses the right to the compensation, he/she cannot take out the severance-paid fund of his/her account and he/she also loses the right to the unemployment insurance.

The unemployment insurance is paid, in Brazil, for a period from 3 to 5 months, as general rule, and the amount is based on the measure of the last three wages paid to the worker up to a maximum fixed annually by CONDEFAT, the Deliberative Council of the Fund of Help to the Worker, responsible organ for the deliberation on the program of the unemployment insurance.

In Brazil, for judgment of the concerning conflicts within the employment relationship, there is a specialized court. Therefore, every conflict based on an employment relationship in the private sector is processed and judged by this specialized court in employment law.

The use of the arbitration and of the mediation, in spite of an existing legal provision, is, still, little spread. Some dispersed institutions exist in the country that promote the diffusion of the labor arbitration, but, as general rule, the employees still prefer to appeal to the judicial system.

As an overview, this is the Brazilian individual employee rights system. There are varying other specific statutes for certain categories, as, for instance, the Act n. 5889/73 for the rural employees.

The Brazilian employment law is, as we presented, very regulated through various statutes. The main important is the Labor Code (Consolidação das Leis do Trabalho - CLT) and the principles expressed in the 1988 Federal Constitution.

### **3.1.2. THE BRAZILIAN LABOR LAW**

Labor law is understood, in Brazil, as all the legislation, which regulates the collective bargaining system. It is, in the case of Brazil, the most corporatist part of the employment law. The collective bargaining system is strongly influenced by the Italian “Carta Del Lavoro” and it means strong regulation in union matters in a centralized system.

The main principle that governs the Brazilian labor law is the union unity, in other words, just a union representation for level and degree, creating a confederate system with representation for degrees: union, federation, and confederation, maintained in its unit by the union framing, or the identification of the representation through the notion of workers' category and of employers category, and for the territorial base, limit of geographical representation, imposed by the State.

This means that for certain category of workers it can only exist a union in certain municipal district. Let us take as example the workers of the plastic industry in São Paulo's city. It can only exist a union representing all the employees in plastic companies of the city, and it can only exist a union representing all the plastic industries, as well.

The Federal Constitution of 1988 maintained such corporatist structure in its article 8, because it maintained the union unity and the confederate system. It is not permitted a regime of total freedom and union autonomy then.

Beside the confederations, there are in Brazil five big central of unions. These organizations are not able, however, to negotiate on behalf of the workers unless under a specific mandate. Under the Brazilian labor law only the unions can set up place for a collective bargaining. The collective bargaining is structured for just contemplate an annual negotiation for each category. This means that employers are forced to negotiate just once with the workers' respective unions a year, that is the called base date, that is also the reference of validity of the collective bargaining agreement. Normally the negotiation only exists in this period. In the more advanced union environments and for occasions of strike, quite rare hypotheses in current Brazilian reality, it can exist negotiations in other periods than in the base date. What is called permanent negotiation

does not exist because there are not national minimum standards to be specified by the decentralized negotiation.

The called date base is not the same for the entire category. Some categories negotiate divided in different months, other, more united, centralize their negotiations in the same time. It can be negotiation by company or groups of companies, usually taking care of the local issues. The negotiations of the work conditions and salary readjustment, though, are taken only by the whole category, and not by company.

In Brazil the collective bargaining agreement is signed between two unions, employers and employees. There is another kind of agreement signed between the employees union and the firm: that is the covenant. There is no possibility to prevail any condition of the individual contract of work that thwarts disposition of the collective bargaining agreement or the covenant.

In the case that an agreement does not happen during the collective bargaining, the parts solve the conflict in the specialized court in employment law. This court has the power, after the due process of law, to issue the normative sentence that is the judicial decision uttered in the course of the process with equivalent effects of the collective bargaining agreements. That is called the normative power of the labor courts.

The collective process of labor is also subject to several appeals to the superior courts what is the main cause for the great delay for the definitive solution. This reduces the hypotheses of collective negotiation drastically. However, as most of the Brazilian unions do not have negotiation power, they end up running over the labor courts in the attempt of supplying that fragility.

There still exists, in the Brazilian labor legislation, the right of strike. Such right exists in the Federal Constitution of 1988, in the article 9, as well as in the Act n. 7783, 1989. However, as the unemployment and informality rates in the labor force has been increasing in the last years, in reality just a few workers take the risk to exercise their right of strike.

Differently of the United States, the lock out is not allowed in the Brazilian legislation. The employer that makes it is subject to criminal prosecution

### **3.2. INTERNATIONAL AGREEMENTS SIGNED BY BRAZIL**

The International Labor Organization, an United Nations specialized agency, was created in 1919 through the Versailles Treaty aiming primarily to make the worldwide nations adopt international labor standards to cope with the labor conditions involving injustice, hardship and privation. As it was a peace treaty, its targets were fixed

according to the perception that peace could only be reached if some international, fundamental, supra national rights in the labor field would be respected.

The Declaration of Philadelphia was added to the ILO constitution in 1944 broadening its primary goals with more general social policy and human and civil rights matters. The main notion is that labor is not a free exchangeable product like other non-human goods. Labor is not a commodity and has not to be treated as so. That lead international society to understand labor as a human rights issue.

As a result of the intense work developed by the ILO since its creation, there is a construction of an international labor legislation system. This system works to guarantee international labor standards through its conventions and recommendations amongst the 174 member States of the ILO.

Every year representatives of these countries gather in order to discuss labor matters and to issue conventions and recommendations. A convention, whenever ratified by a member, becomes part of its law system and it is, therefore, mandatory for that country. A recommendation works as an advice only, it is not obligatory.

ILO concerned about the globalization debate and the fact that international competition, strongly increased during the last decade, could deteriorate the employment relationship throughout the entire world and mainly in the poorest countries, issued, during its 86<sup>th</sup> meeting in June, 1998, the ILO Declaration of the Fundamental Principles and Rights at Work and its Follow-up.

Differently than the World Trade Organization (WTO) which is concerned about trade and so far could not reach a consensus in issues like labor and environmental standards, ILO reached this consensus during the above cited 86<sup>th</sup> meeting in Geneva, Swiss. It is due to the fact that it is based upon the idea of that human rights and social justice are essential to guarantee universal and lasting peace.

Another principle applied to this important declaration is that economic growth is essential but insufficient to assure equity, social progress and eradication of the misery. Economic growth and social progress should always run together and it is the reason to guarantee the fundamental principles and rights at work.

The framework for this declaration is based on four main principles. Related to these four main principles there are seven fundamental conventions which have to be ratified by all the members States as they have a commitment derived from the fact of being parts of the ILO.

The four main principles and the seven related conventions are:

1) Freedom of Association

- Freedom of Association and Protection of the Right to Organize Convention, 1948 – Convention No. 87
- Right to Organize and Collective Bargaining Convention, 1949 – Convention No. 98

2) The Abolition of Forced Labor

- Forced Labor Convention, 1930 – Convention No. 29
- Abolition of Forced Labor Convention, 1957 – Convention No. 105

3) Equality

- Discrimination (Employment and Occupation) Convention, 1958 – Convention No. 111
- Equal Remuneration Convention, 1951 – Convention No. 100

4) The Elimination of Child Labor

- Minimum Age Convention, 1973 – Convention No. 138

Every year as a follow-up, ILO reports about the situation in every State member.

The United States has only signed one of the seven fundamental conventions. That is the Convention of Abolition of Forced Labor, No. 105. The Discrimination (Employment and Occupation) Convention, No. 111, has a formal ratification process initiated and the Minimum Age Convention, No. 138, is currently being examined. The other four conventions (No. 87, 98, 29, and 100) diverge from national legislation.

Brazil has ratified five of the seven fundamental conventions, so far. It lacks the Freedom of Association and Protection of the Right to Organize Convention, No. 87, and the Minimum Age Convention, No. 138.

The Convention No. 138, nowadays, has a formal ratification process initiated through the message no. 1434 from October, 19<sup>th</sup>, 1999, in which President Fernando Henrique Cardoso sent the ratification process to the consideration of the

Congress. It was possible due to the 20<sup>th</sup> Amendment of the Brazilian Federal Constitution, which raised the minimum age to access the labor market from 14 to 16 years in regular jobs, and from 12 to 14 years under an apprenticeship contract.

The Convention No. 87 will be examined after an amendment of the Brazilian Federal Constitution.

As a result, Brazil has an international agenda and it is linked to international human rights at work. It is a notion that international labor standards contribute to development and that any economic growth must be followed by social justice.

### **3.3. THE ROLE OF THE BRAZILIAN MINISTRY OF LABOR AND EMPLOYMENT**

The Brazilian Department of Labor, called Ministry of Labor and Employment, has the responsibility to promote the policy on creation of jobs, to guarantee the exercise of the fundamental labor rights, to issue regulation on employment law, to audit and to inspect the execution of the regulation norms, to solve individual and collective labor conflicts and to register unions and the collective bargaining agreements amongst others. That has been the traditional role of the Brazilian Ministry of Labor and Employment. As part of the executive branch, it has also the responsibility to promote the labor reform by connecting to the various social actors concerned to the issue and optimizing the discussion in the Brazilian Congress.

The Organization of American States (OAS), concerned about the globalization debate and its implications to the human rights and work conditions within Americas, issued on October 21, 1998, the Declaration of Viña Del Mar, signed by all the Ministries of Labor present in the XI Inter-American Conference of Ministries of Labor. In this declaration there are certain goals to be achieved. That is to permit economic growth with social justice. The document contains the declaration itself, a plan of action for the areas of employment and labor market, labor relations, and social security, and a part for the modernization of the State and labor administration, mainly in the area of the inspection of the national labor standards.

The Labor Inspection is part of the labor administration in Brazil. It has its main lines defined by the Convention No. 81 of ILO. It has as its duties to diminish the informality levels in the Brazilian labor market, to audit and to inspect the worker protection rules, including safety and health administration, to guarantee the compliance of collective bargaining agreements, and the international conventions ratified by the Brazilian government. It has played and still does a fundamental role by combating slave, forced and child labor. It also combats frauds in the employment contracts. Its main role

is, therefore, to prevent employment conflicts, to protect the public interest and to keep the social peace by assuring that the employment law will be complied by both employers and employees, in individual and collective basis.

As a result of the 1998 Declaration of Viña Del Mar, the Labor Inspection is passing through a process of modernization in which its duties are broadening, passing from a mere punitive aspect to a preventive role, by using tripartite negotiations, as recommended by the ILO Convention no. 144.

That means new roles to be performed by the labor administration. It includes to promote the social dialogue, to study and to understand the impact of economic integration in the national labor legislation, to promote the integration of the informal market, amongst others related to the diminishing of social tensions and increasing the social participation even in the formulation of policies and new regulation, to follow the behavior of the labor market and to propose and to adopt measures to create job places, and to inspect the employment law under a new perspective.<sup>24</sup>

The most important role for the Labor Inspection and labor administration in all of this process of globalization is to promote the social dialogue within the country, informing both employers and workers, and guaranteeing the fundamental human rights in the work field. That is the challenge and the main responsibility of the Brazilian Labor Inspection for the 21<sup>st</sup> century.

### **3.4. THE PROPOSALS FOR THE BRAZILIAN EMPLOYMENT LAW REFORM**

It is important to stress initially that although the Brazilian Ministry of Labor and Employment has been promoting the social dialogue and has also proposed a draft of a labor reform, that is, the Brazilian Congress must pass it and to issue the necessary amendments in the constitution.

As it was shown before, individual employee rights, in Brazil, are protective enough. It is in complete harmony with the world trend in human rights in the labor relationship. As a developing country, Brazil has to be concerned about the international labor standards in order to keep economic growth with social justice.

Nevertheless, in order to turn the law flexible enough to leave workers and employers to adapt themselves faster in a very quick changing in the global economy, some changes in the Brazilian employment law are necessary.

The first and most important reform is the one in the article 8 of the Federal Constitution. This reform should be done by a constitution amendment that requires pressure and interest of the social actors to promote it.

The article 8 in the Brazilian Federal Constitution deals with labor law and union organization. It is the main source of the Brazilian labor law principles and it maintained the ancient system of just one union per category per territory, and it stress that this territory cannot be smaller than a municipality.

Besides, it still keeps the union tax, which is a social contribution due once a year and it is equal to one entire day's worker wage. This tax has to be paid by any employee and any employer (based in the enterprise's revenues) to their unions, independently of the unionization.

Other important article of the Federal Constitution that should be reformed is the number 114. This provision gives to the judicial system, to the labor courts, the power to issue normative sentences whether a conflict arises during a process of collective bargaining.

As a concrete consequence of those rights established in the Federal Constitution plus the principle of non-interference in union matters which is also written in the same constitution, there is a situation where unions are not strong enough to settle good agreements.

Actually, after the Federal Constitution in 1988, it became easier to someone found a union. The constitution says that the State cannot demand special requirements for a union to be founded or to exist. That is why, according to the latest statistics of the Brazilian Ministry of Labor and Employment, there are circa 16.500 unions within the territory today. This high number of unions reflects also a weakness of the system because makes some of these unions have just a few number of workers linked to it, and normally, these unions are just created to gather the union tax, instead of dealing with labor matters.

Therefore, in order to improve collective bargaining, the Federal Constitution needs to be reformed changing the actual system of unity in union representation to a future system of plurality union representation. That means the possibility to the employees to form their own union based in the work plant, for instance. Still, in order to stimulate the collective bargaining, employees must feel free to join the most convenient union. That is the reason to abolish also the mandatory union tax.

Another important change to improve collective bargaining is the extinction of the normative power of the labor courts. That means to abolish the power the labor courts have to issue sentences in a collective bargaining process, deciding on behalf of the parts what is best for them. It has to be reformed also through an amendment in the Federal Constitution.

With these three measures, abolishment of the union tax and the normative power of the labor courts, and the turning from a unity union system to a plurality union



system, it is predicted to decrease the number of unions but increase their power of negotiation. It will improve also the workers participation in the unionization process.

After the necessary amendments of the Federal Constitution, Brazil will be able to ratify the 87<sup>th</sup> Convention of the ILO, which is the last lacking of the 7 fundamental conventions of ILO of rights in the work place.

Brazil will have, then, an entire body of rights completely in accordance with the international pattern. In labor law matters it will be guaranteed completely freedom of association and formation of unions. Workers will be free to form or to join a union and collective bargaining will have a stronger role as an independent and alternative source of law.

Another very important point is the training and qualification of the Brazilian workers. As new technologies are introduced faster and more frequently, workers have to be in constant training programs. Although it is a multi-interest issue, besides of labor, the labor reform could also do something. The main proposal should be more regulation in collective or mass dismissals or layoffs through a specific statute, like the American Worker Adjustment and Retraining Notification Act of 1988. This statute would require, as a proposal, collective bargaining and a plan for requalification of the employees affected. Brazil has no rules for collective dismissal or mass layoffs which may cause severer social concerns like the recent 1998 case of the Ford Motors Company mass layoff and dismissal in the plant in metropolitan São Paulo area.

All those changes should encourage the participation of the worker in the union matters. It should also stimulate collective bargaining in the work place as the most legitimate way to gain rights and best conditions in work.

As a result, collective bargaining will be stronger too, increasing the participation of collective bargaining agreements into the workers rights. That will increase also the notion of collective bargaining agreement as a source of law at the same level as the statutes itself, what the employment law doctrine calls the Collective Private Autonomy.

These are the necessary reforms to modernize the employment relationship in Brazil. There must be kept a basic employment law, a basic framework, based on the human rights doctrine. That could be a compose of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, the article number 7 of the Federal Constitution which stresses some basic individual employee rights and some basic statutes like CLT, mainly concerning to the individual employee rights part. Besides this basic framework, a strong collective bargaining system through which workers could improve their work conditions.

The basic framework as part of the public interest of the State in keeping social peace, would not be negotiable. It would be the basic workers rights from which the collective bargaining would start to increase the employees' rights.

As a result of the increase of collective bargaining, there is a changing role for both the Ministry of Labor and Employment, through its labor administration, and Judicial System, through its labor courts.

In one sense, as collective bargaining tends to increase and statute regulation tends not to be the only source of law in the future, the Labor Inspection starts to have a fundamental role in promoting the social dialogue through the tripartite negotiations. This new role of the labor Inspection is also a result of the labor reform. The tripartite negotiations have been set up in occupational and safety health issues since many years ago. That is the opportunity to broad the application of this tool to any issue related to the employment matters.

Also, the modernization of the labor administration that has already started in Brazil is essential for this new labor framework. It is essential to guarantee the enforcement of the basic labor standards and rights and it is essential to motivate collective bargaining. Collective bargaining with fair and clear rules and regulation can turn the employment relationship flexible enough to allow the workers and the firms adjust themselves to a new and competitive globalized economy. In the collective bargaining field is important also to encourage negotiations by sectors of the economy, in search of the collective labor contract for the entire country.

The labor administration can help by searching new ways to negotiate, individually or collectively. It can still serve as a specialized and high qualified body of public arbitrators and mediators for both individual and collective disputes.

This change also requires a final topic. The broadening of jurisdiction of both entities, judicial system and labor administration. That means to enlarge the actual jurisdiction from the employment relationship in the private sector to any labor matter related to the work field in both private and public sector. E.g.: broadening jurisdiction to audit independent contractors and to inspect occupational safety and health in the public sector. This is related to the public interest in maintain social peace and social justice under the principle that work conditions are a subject of human rights and human dignity.

## **CONCLUSION**

As a conclusion of the present work it can be affirmed that the world is going towards an international table of rights in the work field. The globalization process had a key role by making countries more transparent to the world with more open economies.

The economic growth that happened in the last decade was not comparable to any other in the human history and there is still a great disequilibrium between economic growth and human development.

The market by itself can not resolve the social problems that arise from the globalization as it was not able to solve the problems that the Industrial Revolution has brought. Those problems have to be solved by strong and efficient public policies by improving basic and elementary education, as well as retraining programs for unemployed workers. Public policies should also try to improve the work conditions of the rural workers and to abolish discrimination in the work place and both the American and the Brazilian Department of Labor have programs related to the issue. The Brazilian labor inspection has also to keep fighting against slave, forced, and child labor. Finally, it has to keep encouraging collective bargaining and to improve it.

The American employment relationship system is normally more related to public policies than to individual employee rights. It makes the American employment law very flexible but at the same time unstable. That is the reason why the American Department of Labor sets as long term goal the codification of all its labor and employment legislation.

However it is important to turn the Brazilian labor market a few more flexible. This not means to abolish workers rights and to let the market work by itself with no rules. It is necessary a minimum table of rights not flexible because of the public interest in maintain the social peace, and strong and large collective bargaining as the flexible part of the employment contract where the parts can freely negotiate.

The Brazilian work force has to improve its working skills in order to be a part in a competitive globalized world. The Brazilian employment law has to be protective enough to maintain the workers basic standards of living and flexible enough to allow the necessary adjustments in the employment contract.

To improve the creation of jobs in Brazil, there must be economic growth and more self regulated employment law. This self regulation would be issued by the social actors, employers and workers, as it has been in the United States since the collective bargaining encouragement gave by the Wagner Act in 1935.

Therefore, in a certain sense, the American and the Brazilian employment law are approaching. The American is going to a codified employment law system, more protective, with focus on the individual employee's rights and more regulation in the labor market. In the other hand, Brazil is going to a less regulated employment market and with focus on the collective bargaining.

This harmonization of the employment law in both countries can be very useful for the future negotiations of the Free Trade Area of Americas (FTAA), the possible free trade agreement between NAFTA and MERCOSUL.

This also could be a chance for the international labor standards appointed by ILO. The labor standards discussion in WTO should be avoided because it could lead to commercial boycotts and other barriers to products made in countries indicated as practicing social dumping. This can make the social situation in these countries still worse and threaten the social justice as well as the world peace.

## **BIBLIOGRAPHY**

Aviso n. 1702 – Casa Civil, de 19 de outubro de 1999, do Exmo. Sr, Chefe da Casa Civil da Presidencia da Republica Pedro Parente

Covington, Robert N., Decker, Kurt H. *Individual Employee Rights (in a nutshell)*. West Publishing Co. 1995

EM n. 163/MRE, de 11 de outubro de 1999, do Emo. Sr. Ministro de Estado das Relacoes Exteriores Luiz F. Lampreia.

Filho, Ari Possidonio. *O Direito do Trabalho Ante a Crise Economica e Outros Fenomenos da Atualidade*. Revista Amatra V, Salvador. 1999.

Guasch, J.Luis. *Labor Market Reform and Job Creation: The Unfinished Agenda in Latin America and Caribbean Countries*. The International Bank for Reconstruction and Development/The World Bank. 1999.

International Labor Organization. *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up*. Geneva. 1998.

Jansen, Dennis W., Delorme, Charles D., Ekelund, Robert B., Jr. *Intermediate Macroeconomics*. West Publishing Company. 1994

Katz, Harry C. & Kochan, Thomas A. *An Introduction to Collective Bargaining and Industrial Relations*. Irwin McGraw-Hill. 2000. Second edition

Mensagem n. 1434, de 19 de outubro de 1999, do Exmo. Sr. Presidente da Republica Fernando H. Cardoso

Ministerio do Trabalho, SEX. *Anais do Seminario Internacional de Relacoes do Trabalho: aspectos juridicos, sociais e economicos*. Brasilia. 1998

Nascimento, Amauri Mascaro do. *Curso de Direito do Trabalho*. Ed. Saraiva. 11 edicao. 1995.

Neto, Jose Francisco Siqueira e Oliveira, Marco Antonio de. *As Negociacoes Coletivas no Contexto do Plano Real*. OIT. 1999

Paulo, Jose Alves de. *Dados Comparados nas Relacoes de Trabalho do Mercosul*. Revista LTR. 59-09/1172

Pereira, Armand. *Direitos Fundamentais no Trabalho*. Correio Braziliense. 10/05/1999

Psacharopoulos, George, S.Morley, A.Fiszbein, H.Lee, and B.Wood. *Poverty and Income Distribution in Latin America – The Story of the 1980's*. World Bank Technical Paper 351. Washington D.C.. 1997.

Rodriguez, Carlos Monje. *Labor Rights and Free Trade: A New Role for Labor Ministries*. Organization of American States.

Tapiola, Kari. *Empresas Multinacionais e os Desafios Sociais do Seculo XXI*. OIT. 1999

Tokman, Victor E. y Martinez, Daniel. *Administracion Laboral y Modernizacion de Los Ministerios de Trabajo en America Latina*. OIT. Oficina Regional para las Americas. Vina del Mar, Chile. Octubre, 1998.

U.S. Department of Labor, U.S. Department of Commerce. *Fact Finding Report – Commission on the Future of Worker-Management Relations*. May 1994.

U.S. Department of Labor, U.S. Department of Commerce. *Report and Recommendations – Commission on the Future of Worker-Management Relations*. December 1994

And the websites:

[www.mte.gov.br](http://www.mte.gov.br)

[www.dol.gov](http://www.dol.gov)

[www.oas.org](http://www.oas.org)

[www.worldbank.org](http://www.worldbank.org)

[www.usia.gov](http://www.usia.gov)

[www.cia.gov](http://www.cia.gov)

[www.census.gov](http://www.census.gov)

[www.whitehouse.gov](http://www.whitehouse.gov)

- 
- <sup>1</sup> Johnson, Paul M. A Glossary of Political Economy Terms (Online Edition). Auburn University. On www.ask.com
- <sup>2</sup> Katz, Harry C. & Kochan, Thomas A., Irwin. An introduction of Collective Bargaining. McGraw-Hill. 2000. Pg. 70.
- <sup>3</sup> Katz, Harry C. & Kochan, Thomas A., Irwin. An introduction of Collective Bargaining. McGraw-Hill. 2000. Pg. 55.
- <sup>4</sup> The Dryden Press
- <sup>5</sup> Katz, Harry C. & Kochan, Thomas A., Irwin. An introduction of Collective Bargaining. McGraw-Hill. 2000.Pg. 69-70
- <sup>6</sup> (29 USCA comma 158 (a) (3) )
- <sup>7</sup> (29 USCA comma 654 (a))
- <sup>8</sup> (Bratt v. International Business Machines Corp. – Massac. 1984)
- <sup>9</sup> (Vernars v. Young – 3d. cir. 1976)
- <sup>10</sup> (Rulon-Miller v. IBM – Cal. App. 1984)
- <sup>11</sup> (5 USCA comma 552 (1988))
- <sup>12</sup> (29 USCA comma 496, 1988)
- <sup>13</sup> (26 USCA, comma 496, 1988)
- <sup>14</sup> (29 USCA, comma 2101-2109, 1991)
- <sup>15</sup> U.S. Department of Labor, Educating America: An investment in our future, Report by the council of economic advisors and the U.S. Department of Labor, Washington, DC: GPO, 1995
- <sup>16</sup> Jansen, Dennis W., Delorme, Charles D., Ekeund, Robert B., Jr., Intermediate Macroeconomics. West Publishing Co., 1994. Pg. 8.
- <sup>17</sup> Jansen, Dennis W., Delorme, Charles D., Ekeund, Robert B., Jr., Intermediate Macroeconomics. West Publishing Co., 1994. Pg. 64
- <sup>18</sup> Jansen, Dennis W., Delorme, Charles D., Ekeund, Robert B., Jr., Intermediate Macroeconomics. West Publishing Co., 1994. Pg. 62
- <sup>19</sup> U.S. Department of Labor, U.S. Department of Commerce, Fact Finding Report - Commission on the Future of Worker-Management Relations, May 1994. Pg. Xi
- <sup>20</sup> U.S. Department of Labor, U.S. Department of Commerce. Fact Finding Report - Commission on the Future of Worker-Management Relations, May 1994. Pg. 26 and 27.
- <sup>21</sup> U.S Department of Labor & U.S. Department of Commerce. Commission on the Future of the Worker-Management Relations – Report and Recommendations. December 1994. Pg. 35
- <sup>22</sup> U.S Department of Labor & U.S. Department of Commerce. Commission on the Future of the Worker-Management Relations – Report and Recommendations. December 1994. Pg. xxii
- <sup>23</sup> Nascimento, Amauri Mascaro do. Curso de Direito do Trabalho. Ed. Saraiva. 11 edição. 1995. Pg. 11
- <sup>24</sup> Tokman, Victor E. & Matinez, Daniel. Administracion Laboral y Modernizacion de Los Ministerios de Trabajo en America Latina. Oficina Internacional del Trabajo. Oficina Regional para Las Americas. Viña Del Mar, Chile, Octubre, 1998. Pg. 31, 32.